

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DAVID J. SCOTT, # 191939,)
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Plaintiff,) Case No. 1:95-cv-571
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v.) Honorable Joseph G. Scoville
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PHILLIP BAIR,) **ORDER**
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Defendant.) _____
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This was a prisoner civil rights action that was tried before a jury, which returned a verdict in favor of defendant. The matter is now on appeal to the United States Court of Appeals for the Sixth Circuit (case no. 05-1717). In connection with his appeal, plaintiff filed two motions in this court. First, plaintiff has moved for reconsideration of this court's previous order denying the provision of free transcripts (docket # 223). The court's previous order was based upon 28 U.S.C. § 1915(g), which prohibits a prisoner from bringing a civil action or appeal *in forma pauperis* if he has "three strikes." Plaintiff argues that the court has misinterpreted section 1915(g), which, he contends, contains no language prohibiting the provision of free transcripts. Plaintiff ignores 28 U.S.C. § 753(f), also cited in the court's previous order. Section 753(f) provides free transcripts only for those parties "permitted to appeal *in forma pauperis*." Plaintiff is not permitted to appeal *in forma pauperis* because of the effect of section 1915(g). Consequently, his motion for reconsideration is meritless -- this court has no discretion to ignore a statute.

Plaintiff's second motion (docket # 224) is for appointment of appellate counsel. Plaintiff filed that motion after the docketing of his notice of appeal in this court. Upon the filing of the notice of appeal, this court lost jurisdiction over this case, except in aid of the appeal. *See Lewis v. Alexander*, 987 F.2d 392, 394 (6th Cir. 1993). Consequently, any request for appointment of appellate counsel is properly directed to the appellate court. Accordingly:

IT IS ORDERED that plaintiff's motion for reconsideration (docket # 223) be and hereby is DENIED.

IT IS FURTHER ORDERED that plaintiff's motion for the appointment of appellate counsel (docket # 224) be and hereby is DISMISSED.

DONE AND ORDERED this 16th day of August, 2005.

/s/ Joseph G. Scoville
United States Magistrate Judge